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5
6 Attorneys for Complainant

7 BEFORE THE
8 DIVISION OF MEDICAL QUALITY
9 MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
12

13 In the Matter of the Accusation .)	NO. D-4226
14 Against:)	
15 HENRY JOHN WINSAUER, M.D.)	<u>STIPULATION IN</u>
16 1911 Fifth Avenue)	<u>SETTLEMENT AND DECISION</u>
17 San Diego, CA 92101)	
18 Physician's and Surgeon's)	
19 Certificate No. C 38313)	
20 Respondent.)	

21 In the interest of a prompt and speedy settlement of
22 this matter, consistent with the public interest and the
23 responsibility of the Division of Medical Quality, Medical Board
24 of California (hereinafter "Board"), the parties submit this
25 Stipulation and Decision to the Board for its approval and
26 adoption as the final disposition of the Accusation.

27 The parties stipulate the following is true:

28 1. An Accusation, No. D-4226, is currently pending
against Henry John Winsauer, M.D. (hereinafter "respondent"),
before the Board. The Accusation, together with all other

1 statutorily required documents, was duly served on the respondent
2 on or about April 25, 1990, and respondent filed his Notice of
3 Defense (contesting the Accusation) on or about May 2, 1990. A
4 copy of Accusation No. D-4226 is attached as Attachment "A" and
5 hereby incorporated by reference as if fully set forth.

6 2. At all times relevant herein, respondent has been
7 licensed by the Medical Board of California under Physician and
8 Surgeon No. C 38313.

9 3. Respondent is represented by counsel, Peter Hughes,
10 Esq. in this matter. Respondent has fully and completely
11 discussed with said counsel the effects of this stipulation.

12 4. Respondent understands the nature of the charges
13 alleged in the Accusation as constituting causes for imposing
14 discipline upon his Physician and Surgeon license. Respondent is
15 fully aware of his right to a hearing on the charges and
16 allegations contained in said Accusation, his right to
17 reconsideration, appeal and any and all other rights which may be
18 accorded him pursuant to the California Business and Professions
19 Code and Government Code, and with this in mind, freely and
20 voluntarily waives such rights.

21 5. Respondent admits the truth of each and every
22 allegation of the Accusation No. D-4226, excepting and excluding
23 paragraph 21 and agrees that respondent has thereby subjected
24 his license to discipline. Respondent agrees to the Board's
25 imposition of penalty as set out herein in the Order below.

26 6. In consideration of the foregoing admissions and
27 findings, the parties agree that the Board shall, without further
28 notice of formal proceeding, issue and enter an order as follows:

ORDER

A. IT IS HEREBY ORDERED that Physician's and Surgeon's number C 38313 issued to Henry John Winsauer, M.D. is revoked. However, said revocation is stayed and respondent is placed on probation for five years on the following terms and conditions:

1. As part of probation, respondent is suspended from the practice of medicine, directly or indirectly, for 120 days, beginning the effective date of this decision.

2. Respondent shall obey all federal and state laws and regulations substantially related to the practice of medicine in California.

3. Respondent shall report to the Board or its designee quarterly. Said report shall be either in person or in writing, as directed. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

4. Respondent shall comply with the Division's probation surveillance program.

5. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

6. Should respondent leave California to reside or practice outside this state, respondent must notify the Board, in writing, of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

7. Should respondent violate probation in any significant respect, the Board, after giving respondent notice

1 and an opportunity to be heard, may revoke probation and carry
2 out the disciplinary order which was stayed. If a petition to
3 revoke probation is filed against respondent during probation,
4 the Board shall have continuing jurisdiction until the matter is
5 final, and the period of probation shall be extended until the
6 matter is final.

7 8. Upon successful completion of probation,
8 respondent's certificate will be fully restored.

9 9. Respondent shall not prescribe, administer,
10 dispense, order, or possess any controlled substances as defined
11 in the California Uniform Controlled Substances Act.

12 However, respondent is permitted to prescribe,
13 administer, dispense or order controlled substances listed in
14 Schedules IV and V of the Act for in-patients in a hospital
15 setting and not otherwise.

16 Orders forbidding respondent from personal use or
17 possession of controlled substances or dangerous drugs do not
18 apply to medications lawfully prescribed to respondent for a bona
19 fide illness or condition by another practitioner.

20 10. Prior to resuming practice of medicine, respondent
21 shall take and pass an oral clinical examination in general
22 practice. If respondent fails this examination, respondent must
23 take and pass a re-examination before he shall again practice
24 medicine. The waiting period between repeat examinations shall
25 be at three month intervals until success is achieved. The
26 Division shall pay the cost of the first examination and
27 respondent shall pay the cost of any subsequent re-examinations.

28 11. Within 90 days of the effective date of this

1 decision, and on an annual basis thereafter during the period of
2 probation, respondent shall submit to the Division for its prior
3 approval an educational program or course to be designated by the
4 Division, which shall be not less than 40 hour per year for each
5 year of probation. This program shall be in addition to the
6 Continuing Medical Education requirements for re-licensure.
7 Respondent shall provide proof of attendance for 65 hours of
8 continuing medical education of which 40 hours were in
9 satisfaction of this condition and were approved in advance by
10 the Division.

11 B. Accusation No. D-4226, Paragraph Numbers 1 through
12 20, inclusive, are admitted.

13 C. The within stipulation shall be subject to the
14 approval of the Board. If the Board fails to adopt this
15 stipulation as its Order, the stipulation shall be of no force or
16 effect for either party.

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1 I have read the above Stipulation and Order, understand
2 their terms, and agree in all respects thereto.


3 DATED: 9-7-90

4 JOHN K. VAN DE KAMP, Attorney General
5 of the State of California

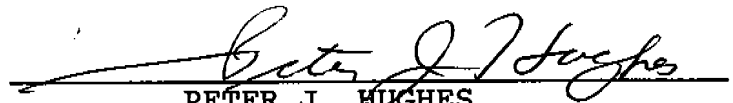
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7 MICHAEL P. SIPE
8 Deputy Attorney General

9 Attorneys for Complainant

10 DATED: 9-5-90

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12 HENRY J. WINSAUER, M.D.
13 Respondent

14 DATED: 9-5-90

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16 PETER J. HUGHES
17 Attorney for Respondent

18 MPS:kc
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REDACTED

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12 In the Matter of the Accusation) NO. D-4226
Against:)
13)
HENRY JOHN WINSAUER, M.D.) ACCUSATION
14 1911 Fifth Avenue)
San Diego, California 92101)
15)
Physician's and Surgeon's)
16 Certificate No. C 38313)
17 Respondent.)
18

19 Complainant Kenneth J. Wagstaff alleges:

20 1. He is the Executive Director of the Medical Board
21 of California (hereinafter "Board") and makes and files this
22 accusation solely in his official capacity.

23 2. On or about September 25, 1978, Physician's and
24 Surgeon's Certificate No. C 38313 was issued to Henry John
25 Winsauer, M.D., (hereinafter "respondent"), and at all times
26 relevant herein, said certificate was, and currently is, in
27 full force and effect.

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Statutes

3. Business and Professions Code (hereinafter "Code") section 2227 provides that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act.

4. Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:

"(a) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter.

. . . .

"(c) Repeated negligent acts ..."

. . . .

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon."

5. Section 2236 of the Code provides in pertinent part:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician or surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact

1 that the conviction occurred."

2 6. Section 2237 of the Code provides in pertinent
3 part:

4 "(a) The conviction of a charge of violating any
5 federal statutes or regulations or any statute or
6 regulation of this state, regulating dangerous drugs or
7 controlled substances, constitutes unprofessional conduct.
8 The record of the conviction is conclusive evidence of
9 such unprofessional conduct. A plea or verdict of guilty
10 or a conviction following a plea of nolo contendere is
11 deemed to be a conviction within the meaning of this
12 section."

13 7. Section 2238 of the Code provides:

14 "A violation of any federal statute or federal
15 regulation or any of the statutes or regulations of this
16 state regulating dangerous drugs or controlled substances
17 constitutes unprofessional conduct."

18 8. Section 2242 of the Code provides:

19 "(a) Prescribing, dispensing, or furnishing
20 dangerous drugs as defined in Section 4211 without a good
21 faith prior examination and medical indication therefor,
22 constitutes unprofessional conduct."

23 9. Section 490 of the Code provides in pertinent
24 part:

25 "A board may suspend or revoke a license on the
26 ground that the licensee has been convicted of a crime, if
27 the crime is substantially related to the qualifications,

1 functions, or duties of the business or profession for
2 which the license was issued . . . A conviction within the
3 meaning of this section means a plea or verdict of guilty
4 or a conviction following a plea of nolo contendere. Any
5 action which a board is permitted to take following the
6 establishment of a conviction may be taken when the time
7 for appeal has elapsed, or the judgment of conviction has
8 been affirmed on appeal, or when an order granting
9 probation is made suspending the imposition of sentence,
10 irrespective of a subsequent order under the provisions of
11 Section 1203.4 of the Penal Code."

12 10. Section 725 of the Code provides in pertinent
13 part:

14 "Repeated acts of clearly excessive prescribing
15 or administering of drugs or treatment, repeated acts of
16 clearly excessive use of diagnostic procedures, or
17 repeated acts of clearly excessive use of diagnostic or
18 treatment facilities as determined by the standard of the
19 * * * community of licensees is unprofessional conduct for
20 a physician and surgeon, . . ."

21 11. Section 11153 of the Health and Safety Code
22 provides in pertinent part:

23 "(a) A prescription for a controlled substance
24 shall only be issued for a legitimate medical purpose by
25 an individual practitioner acting in the usual course of
26 his or her professional practice. The responsibility for
27 the proper prescribing and dispensing of controlled

1 substances is upon the prescribing practitioner . . ."

2 12. Section 11154 of the Health and Safety Code
3 provides in pertinent part:

4 "(a) Except in the regular practice of his or
5 her profession, no person shall knowingly prescribe,
6 administer, dispense, or furnish a controlled substance to
7 or for any person or animal which is not under his or her
8 treatment for a pathology or condition other than
9 addiction to a controlled substance . . ."

10 13. At all times mentioned herein, Dilaudid, a brand
11 name for hydromorphone hydrochloride, was a Schedule II
12 controlled substance pursuant to Health and Safety Code
13 section 11055(b)(1)(K), and a dangerous drug within the
14 meaning of section 4211 of the Code.

15 14. At all times mentioned herein, Cylert, a brand
16 name for Pemoline, was a Schedule IV controlled substance
17 pursuant to Health and Safety Code section 11057(f)(3), and a
18 dangerous drug within the meaning of section 4211 of the
19 Code.

20 15. At all times mentioned herein, Preludin, a brand
21 name for phenmetrazine hydrochloride, was a Schedule II
22 controlled substance pursuant to Health and Safety Code
23 section 11055(d)(5), and a dangerous drug within the meaning
24 of section 4211 of the Code.

25 16. At all times mentioned herein, Fiorinal, a brand
26 name for butalbital, a barbiturate, was a Schedule III
27 controlled substance pursuant to Health and Safety Code

1 section 11056(c)(3), and a dangerous drug within the meaning
2 of section 4211 of the Code.

3 17. At all times mentioned herein, Vicodan, a brand
4 name for hydrocodone bitartrate, a barbiturate, was a
5 Schedule III controlled substance pursuant to Health and
6 Safety Code section 11056(c)(3), and a dangerous drug within
7 the meaning of section 4211 of the Code.

8 18. At all times mentioned herein, Ativan, a brand
9 name for lorazepam, was a Schedule IV controlled substance
10 pursuant to Health and Safety Code section 11057(d)(11), and
11 a dangerous drug within the meaning of section 4211 of the
12 Code.

13 Charges and Allegations

14 19. Respondent is subject to disciplinary action
15 pursuant to sections 2234, 2238, and 2242 of the Code because
16 respondent prescribed controlled substances without a prior
17 good faith examination and medical indication therefor, as
18 follows:

19 a. On November 8, 1988, respondent prescribed
20 Dilaudid tablets to Frank Brock, an investigator who used
21 the name of Franklin B██████

22 b. On November 22, 1988, respondent prescribed
23 Cylert to P.G., who used the name of Dawn G██████

24 c. On February 14, 1989, respondent prescribed
25 Preludin to investigator Cynthia Brandenburg, who used the
26 name of Lucinde B██████

27 d. On March 21, 1989, respondent prescribed

1 Preludin to investigator Cynthia Brandenburg, who used the
2 name of Lucinde B[REDACTED].

3 e. On March 22, 1989, respondent prescribed
4 Cylert to P.G., who used the name of Dawn G[REDACTED].

5 f. On March 22, 1989, respondent prescribed
6 Dilaudid to investigator Frank Brock, who used the name
7 Franklin B[REDACTED].

8 g. On March 29, 1989, respondent prescribed
9 Preludin to Detective Wilmer O. Nelson.

10 h. On May 17, 1989, respondent prescribed
11 Preludin to investigator Cynthia Brandenburg, who used the
12 name of Lucinde B[REDACTED].

13 20. Respondent Henry John Winsauer, M.D., is subject
14 to disciplinary action pursuant to sections 2236, 2237, and
15 490 of the Code as follows:

16 a. On September 26, 1989, in the Superior Court
17 of the State of California, County of San Diego, in the case
18 of People v. Henry J. Winsauer, Case No. CR 105905,
19 respondent entered a plea of guilty to one count of violating
20 Health and Safety Code section 11154, prescription of
21 controlled substances for non-legitimate purposes, a felony.
22 On October 24, 1989, imposition of sentence was suspended and
23 respondent was placed on probation for three years. Terms of
24 probation included 30 days sentence in the Work Furlough
25 Program; pay a fine and restitution, violate no laws, not
26 prescribe Schedule I and II controlled substances, and that
27 he not prescribed Schedule III, IV, or V substances without

1 the approval of another physician.

2 b. Respondent was convicted of offenses which
3 were substantially related to the qualifications, functions,
4 and duties of a physician and surgeon.

5 c. Respondent was convicted of charges of
6 violating California statutes which regulate controlled
7 substances.

8 21. Respondent Henry John Winsauer, M.D., is subject
9 to disciplinary action pursuant to sections 725, 2234, and
10 2242, of the Code because respondent prescribed Schedule III
11 and Schedule IV controlled substances in a negligent,
12 excessive and dishonest manner without prior approval of
13 another physician, in violation of the conditions of
14 probation imposed in San Diego Superior Court at his felony
15 conviction sentence on October 24, 1989, as follows:

16 a. On October 24, 1989, respondent prescribed
17 100 tablets of Fiorinal, a Schedule III substance, to
18 Betty G.

19 b. On October 29, 1989, respondent prescribed
20 30 tablets of Ativan, a Schedule IV controlled substance,
21 to Betty G.

22 c. On November 22, 1989, respondent prescribed
23 100 tablets of Fiorinal to Betty G.

24 d. On November 27, 1989, respondent prescribed
25 30 tablets of Ativan to Betty G.

26 e. On December 6, 1989, respondent prescribed
27 30 tablets of Ativan to Betty G.

1 f. On December 6, 1989, respondent prescribed
2 100 tablets of Fiorinal to Betty G.

3 g. On December 27, 1989, respondent prescribed
4 40 Ativan tablets to Betty G.

5 h. On January 12, 1990, respondent prescribed
6 30 Fiorinal tablets to Betty G.

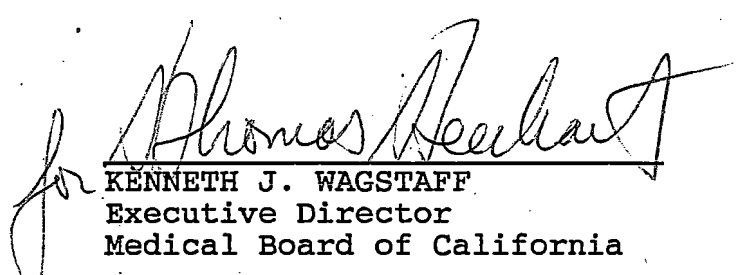
7 i. On January 17, 1990, respondent prescribed 6
8 Vicodan tablets, a Schedule III narcotic, to Tina K.

9 WHEREFORE, complainant requests that a hearing be
10 held on the matters alleged herein, and following said
11 hearing, upon proof of the allegations, the Board issue a
12 decision:

13 1. Revoking or suspending Physician's and Surgeon's
14 License No. C 38313, issued to respondent Henry John
15 Winsauer, M.D.;

16 2. Taking such other and further action as the Board
17 deems proper.

18 DATED: April 25, 1990

19
20 
21 KENNETH J. WAGSTAFF
22 Executive Director
23 Medical Board of California

24 Complainant

25 SD89AD1276
26 MPS:ac
27 3/29/90